



Preparing the Local Authority Case

Every child and local authority is different so the facts of each case are unique. This means that it is not helpful to suggest a rigid format for every LA case. But there are points which apply generally which you will find helpful to consider whenever you draft a case statement and plan to present a case at a hearing.

What the regulations require you to tell us

The rules set out some legal requirements. These can be found in Rule 21(2) of the HESC and practice direction 8

You can see the regulations in full at: www.sendist.gov.uk

The authority's response must say whether or not the LA opposes the appeal. It must be signed by an authorised officer.

If the LA opposes the appeal there are five matters that have to be dealt with. If you find that you have a lot to say on some topics you can subdivide these headings. The rules say that the response must say:

- why the LA opposes the appeal;
- the name and profession of the LA's representative and the LA's address to which documents are to be sent;
- a summary of the facts about the LA's decision;
- the reasons for the decision if these are not in the decision itself; and
- the child's views or the reason why the LA has not got them.

If you do not oppose the appeal, or fail to send us a response in time, we will decide the appeal on the parents' notice or at a hearing which you would not attend. If you do not oppose the appeal or withdraw your opposition in certain cases the appeal is automatically treated as decided in favour of the parents. In these cases there is no need for the parents to withdraw the appeal and we will not make an order.

If the appeal is about the contents of a statement and you do not oppose it (or at a later stage withdraw your opposition) you should send us in writing any changes you have agreed to make to the statement.

Power to strike out

You can ask us to strike out the appeal if you believe it should not continue. The only grounds on which you can apply are those in rule 8. Most commonly applications are on the grounds that parents are asking for an order which we are not empowered to make or that we are being asked to reconsider an earlier decision where the circumstances are unchanged.

You must make an application to strike out on the SO4 form, setting out your reasons in detail. We will send the parents a copy so they can comment on it. If the parents ask to make their comments verbally we will give both of you the chance to explain at a hearing why you feel the appeal should be struck out or continue.

If your application is successful we will order the appeal to be struck out. This will bring it to an end. If your application is dismissed the appeal will continue and we will let you know how it will proceed.

You may apply for a strike out at any time. If you make an application before the deadline for your response you should still send us a response by the date we have told you.

The child's special educational needs

The child's special educational needs are central to any case. We will want to see all the available expert reports, although in general tribunal panels will be most interested in the recent reports. You may want to draw attention to the important points in the response, but lengthy extracts are rarely necessary.

The history of the case

The tribunal's decision necessarily relates to the child's current and future education, but earlier history may be relevant.

A brief history helps to put the appeal in context. If you produce one, be selective. We don't need to know about every letter and telephone call between the LA and the parents, but the timing of events affecting the child can be important. For example give the dates of assessments by professionals, when the child started school and then changed schools, and how long particular types of provision lasted.

The child's progress, or lack of it, is often a key issue. In considering this it is useful to have reports on assessments made over a period of time, school reports and individual education plans, or equivalent records of additional or different provision and outcomes, so we can measure change

The present position

The tribunal needs to form an accurate current picture of the child. The matters covered depend on the nature of the case, but they should be up-to-date and detailed. They may include:

- current educational attainments and end of Key Stage results;
- behaviour at school (and at home);
- latest assessments by people from school or external agencies;
- details of current educational provision and, if relevant, non-educational provision; or
- travel arrangements to and from school.

You can say which current arrangements are successful and which are proving to be less effective. If for any reason the child is not actually receiving all the provision which is intended, please give details.

The child's views

You must include a statement of the child's own views or explain why this is not possible. The views may be included in the LA's response or **on the issues in the appeal** or they may be set in a separate document. Some LA's engage independent people to obtain the child's views. Occasionally the age or the special needs of the child makes it difficult for the LA to elicit the child's views, or the authority may not have

access to him or her. In these circumstances the response must explain why it does not give the child's views.

The child can go to part or all of the appeal hearing, even where the papers contain a statement of his or her views. If you think that the child's presence is likely to affect the presentation of any part of the LA's case, explain why to the panel at the hearing.

Legal requirements

Your response should address any legal requirements which apply to the appeal. Here are two common considerations.

If the parents have expressed a preference for a placement in a maintained school (Education Act 1996, Schedule 27, paragraphs 3 or 8), the LA is only entitled to oppose it for one or more of the following three reasons:

- the placement is unsuitable for the child;
- it would affect the education of others; or
- it would be an inefficient use of resources.

You should say which of these reasons you rely on and provide evidence to demonstrate them.

You should have in mind that children with special educational needs will normally be educated in mainstream schools (Education Act 1996, Section 316, 316A, as amended by the SEN & Disability Act 2001). The LA has a duty to provide education in a mainstream school unless parents have indicated that they do not want their child to be educated in a mainstream school, or unless you are able to demonstrate that this would either be incompatible with the efficient education of other children or that the child should not be educated in a mainstream school.

Points at issue

Appeals only reach us if the LA and the parents disagree, but it is quite in order for discussions to continue after the appeal has been made. You may decide to use disagreement resolution arrangements. However, it should not normally be necessary to delay the hearing because negotiations have not finished.

The LA's response can usefully identify where agreement has not been possible. You should set out the LA's position clearly, with reasons.

SEN Code of Practice

We must take into account the provision set out in the Code of Practice. You should consider the advice provided by the Code and ensure your response reflects the provision that is relevant to the appeal. You should also explain any departure from the Code's relevant provision.

LA policies

We will take LA policies into account if they are set out in the written evidence or explained verbally. But you cannot assume that an LA decision that was made in line with its policy will necessarily be approved by the tribunal (if it were the case there would be no need for a tribunal). We will seriously consider local policies, particularly if you explain why they were adopted and how they reflect national policy and guidance.

Summaries

Summaries of the evidence can help in presenting of the LA's case. Examples are: details of changes to the child's statement that have been agreed with the parents, or a comparison of placement costs.

Schools

We need basic evidence about any school or other type of placement we are asked to consider. Where the appeal is about the school named in the statement we will include separate guidance (SEN14) setting out the information we need. You should make sure your response deals with the matters we raise in this guidance

Academies, City Technology Colleges and schools maintained by another authority

Where an Academy, CTC or an out-of-authority maintained school is proposed by parents it is important that the views of these institutions are represented in your response and that they are able to attend tribunals. Section 2 of our attendance form guidance (SEN5) gives advice on witnesses.

Therapy

If therapy is proposed, is this for educational reasons? What is the nature of the therapy, who will deliver it, what are that person's qualifications? Where will therapy be delivered and how often? What is the cost of therapy?

Monitoring

Who will monitor the child's progress and how often?

Cost

The cost of provision can be important. We often have to decide whether there would be an "inefficient use of resources" or "unreasonable public expenditure". When this is likely to be a relevant issue, you should provide detailed figures with full explanations. Our leaflet about school costs should help you with this.

Your witnesses

You will need to tell us whom you want to bring along as witnesses. You should check with your witnesses and agree their attendance before you tell us when you can come to a hearing. We will give you a form to fill in with your witnesses' details and tell you when to return it.

The witnesses you choose should be able to discuss what you see as the main issues. Experience suggests that wherever possible it is useful to have at least one witness who knows the child well, and if a particular school is being proposed, someone who is well informed about the school.

Witnesses must expect to answer questions about their evidence from parents, their representatives or witnesses, and from the members of the tribunal. They will need a thorough knowledge of the facts and reasoning behind the information they give. For example the witness cannot just say 'I consulted the authority's transport department

and that's what they said the cost would be'. He or she needs to be able to explain how the figure has been worked out.

You should tell your witnesses that they are there to assist us with their professional views and not simply support the LA case. Expert evidence which appears to be biased can lose credibility.

What happens next?

There is a strict time limit by which we must receive your response and written evidence. Normally you have six weeks. After the response deadline we will provide both you and the parents with a page numbered set of papers the Notice of appeal and the response. The evidence you send us before the hearing, and what you say on the day, are equally important to us. Our decision rests on all the written and spoken evidence presented to us. There are strict rules on what further written evidence you can put in after the response period. Telephone us if you think you are going to need to send late evidence and we can explain the procedure. When we send you the parents' notice of appeal we will give you further advice about your hearing including how we will deal with any late evidence. If you want to be sure we take something into account you should make sure that it is in the evidence you send with your response.

You can help us

We are committed to providing a high quality service. One of the ways we can continue to improve is by listening and responding to you. We welcome your comments on this guidance, or indeed on any aspect of our service.

You should address your comments to the Tribunal Manager at:

Special educational Needs & Disability
Mowden Hall, Old hall
Staindrop Road
Darlington
DL3 9BG

You do not need to give your name, but if you do we will acknowledge your comments and, if we can, respond to the points you raise.